



St Vincent de Paul Society
NATIONAL COUNCIL *good works*

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Submission to the Senate Legal and Constitutional
Affairs Committee

***Australian Citizenship Legislation Amendment
(Strengthening the Requirements for Australian
Citizenship and Other Measures) Bill 2017***

July 2017

Introduction

The St Vincent de Paul Society (the Society) welcomes the opportunity to respond to the Inquiry on the *Australian Citizenship Legislation Amendment (Strengthening the Requirements for Australian Citizenship and Other Measures) Bill 2017* (the Bill).

As an organisation committed to social justice and overcoming social division and exclusion, we strongly oppose the Bill and recommend that it be rejected. The Society has a long history supporting new arrivals in Australia, and we believe the inclusive nature of Australian citizenship has been an important element in the success of our multicultural society. We are concerned, however, that the current Bill shifts the focus of citizenship from inclusion to exclusion. The proposed changes risk fostering division and will ultimately have the greatest impact on migrants and refugees who are the most vulnerable.

These changes to citizenship are being proposed at a critical time in our ongoing national debate about migration and what it means to be Australian. In the public domain there has been an increasingly toxic debate over migration, and a weakening of some of the foundations of Australia's inclusive multicultural policies. We are concerned that a number of policies have already been enacted that have eroded the rights of migrants and blurred the boundaries between security, migration and citizenship. This includes increasingly punitive policies towards people who seek asylum; the continual strengthening of character tests and visa restrictions; the withdrawal of social security and other social protections to certain classes of residents and asylum seekers; the militarisation of border security and migration functions; and moves to undermine crucial protections against racial discrimination in the name of freedom of speech.

We believe this Bill, and the political rhetoric that has surrounded it, risks stoking further divisions and fostering a perception that some groups in Australia are more welcome and worthy than others. An underlying concern with the proposed Bill is that its various provisions will reinforce exclusion and undermine social cohesion and, in particular, compound the marginalisation of the most vulnerable and disadvantaged migrant cohorts. We believe that, if enacted, the Bill will disproportionately impact those who already face barriers to inclusion in Australia, including people from refugee backgrounds, and will compound their isolation and exclusion from the Australian community.

We believe, in short, that this Bill is unfair, unnecessary and divisive, and we urge the Committee to recommend that it be rejected.

About the St Vincent de Paul Society

The St Vincent de Paul Society (the Society) is a respected lay Catholic charitable organisation operating in 149 countries around the world. Our work in Australia covers every state and territory, and is carried out by more than 64,000 members, volunteers, and employees. Our people are deeply committed to social assistance and social justice, and our mission is to provide help for those who are marginalised by structures of exclusion and injustice. Our programs assist millions of people each year, including people living with mental illness, people who are homeless and insecurely housed, migrants and refugees, women and children fleeing violence from men, and people experiencing poverty.

The Society has a long history of working with migrants and refugees. In relation to asylum seekers, Catholic social teaching emphasises the importance of helping people who have fled their homeland due to war, persecution, injustice or intolerance, and are now seeking asylum on our doorstep. To that end, the Society has a migrant and refugee committee or service in each State and Territory in Australia, which coordinates advocacy and material aid. These services range from helping refugees lodge appeals against adverse decisions, to providing living support for those newly in our community. We also coordinate a national Vincentian Refugee Network, and participate in and coordinate visits to immigration detention facilities where we are permitted to.

Specific concerns with the Bill

The new English language requirement

The Bill introduces a new requirement for applicants to attain a ‘competent’ rather than ‘basic’ level of English language proficiency. It grants the Minister the power to make a determination, by legislative instrument, on how this requirement will be satisfied. According to the Minister, the minimum level of ‘competent’ English will require band score six under the international English language testing system (IELTS).

This proposed change significantly raises the current standard, and would require separate testing on each of the four components of proficiency (listening, speaking, reading and writing). The IELTS band six corresponds to the level required for entry into many Australian universities, and it is a level of proficiency that many native English speakers in Australia would fail to meet.¹

The Society believes that setting this higher threshold for English language proficiency is unnecessary, discriminatory, and would disproportionately impact on more marginalised groups, including people from a refugee background, older migrants, and migrant women. In particular, people from refugee backgrounds are the least likely to speak English upon arrival of all the migrant streams. It is important to acknowledge immense diversity in the educational and language backgrounds of refugees. However, overall, people from refugee backgrounds are more likely to have had disrupted education and to be drawn from a lower socio-economic background. Many have also endured trauma as a result of forced displacement. These factors can significantly impact on language learning, and their ability to navigate complex testing regimes and achieve an academic level of English language proficiency. For many, passing this Bill will simply place Australian citizenship out of reach.

There is also a risk that toughening the English language threshold will unfairly disadvantage women from refugee backgrounds and migrant women with caring responsibilities. Preventing women from gaining citizenship – and thereby the benefits and privileges citizenship confers – has the potential to heighten their social exclusion and vulnerability, and render them more dependent on male partners. Women who have fled conflict or poverty overseas have often had limited educational opportunities, while those with caring and domestic responsibilities may face barriers to developing their English language skills outside the home. According to the Department of Social Services’ *Longitudinal Study of Humanitarian Migrants*, women who are from refugee backgrounds are more likely than refugee men to have had disrupted education, limited literacy prior to resettlement, and minimal or no English upon arrival in Australia.² Further, the lack of accessible and affordable childcare continues to be a significant barrier for women’s participation in English language classes.

The Society recognises that having a functional command of English is highly desirable for negotiating Australia's social and economic institutions. However, if strengthening competency in English is a priority for the Australian Government, then investment in comprehensive and accessible English language programs is a more appropriate consideration than a punitive and exclusionary English language test for citizenship.

Eligibility for the Citizenship test

The Bill includes a provision that enables the Minister to determine eligibility requirements for sitting the citizenship test. The Explanatory Memorandum indicates that the intention of this new power is to allow the Minister to determine that those who have failed the citizenship test are not eligible to sit it again. The Australian Government's *Strengthening the test for Australian Citizenship* discussion paper suggests that this determination will impose a two-year bar on resitting the test after an applicants has failed at three attempts.

As per many other provisions within this Bill, we believe this restriction on resitting the citizenship test will only serve to exclude and further marginalise already vulnerable and disadvantaged migrant cohorts. For example, it will disproportionately affect people from refugee backgrounds who have historically had lower pass rates for the citizenship test than other applicants.³ Extending the time taken to gain citizenship will only deepen their insecurity and undermine their sense of belonging.

The 'good character' requirement

We oppose provisions in the Bill which expand the 'good character' requirement for Australian citizenship. These provisions strengthen the character requirements (including in relation to domestic violence and involvement in gang activities), and extends the requirement to minors. The Bill also reduces the oversight of the Administrative Appeals tribunal (AAT) in relation to such matters.

We consider such changes counter-productive. For example, extending the 'good character' requirements to minors does not allow any consideration of the complex circumstances of young offenders, nor their significant prospect for rehabilitation once effective interventions are made. We believe, moreover, that the criminal activities referred to in the Bill can be considered under existing legislation, and are best dealt with under criminal law where a person can be accorded due process.

Of particular concern, incorporating domestic violence provisions into the citizenship test has the potential to deter women affected by such violence from seeking help. There is already evidence that sanctions for domestic violence that are linked to visa outcomes may increase people's reluctance to report their concerns and to seek help. For example, some social workers have reported that the Code of Conduct imposed on asylum seekers has meant women are less inclined to seek help or report concerns, because of fears that their partner will be detained and that their children will be left destitute.

Extension of residence requirements

We oppose the Government's proposal to extend the waiting period for citizenship. The proposed amendments require an applicant to demonstrate four years of continuous permanent residence in Australia for the purposes of 'greater examination' of their 'integration with Australia'.

This requirement has no other effect other than to delay the application. It also discounts time spent in Australia by migrants on temporary or provisional visas, even though there are residents on temporary visas who have lived in Australia for extended periods and have become active and contributing members of the community. Extending the waiting period and discounting those on temporary visas risks creating a two-tier class of residents, including for asylum seekers placed on temporary visas.

Widening Ministerial discretion to deny citizenship

The provisions provide unprecedented power to overrule a decision of the AAT if the Minister is satisfied that it is in the public interest to do so. This is an unprecedented expansion of power which places the Minister above the judicial system and denies individuals procedural fairness by barring them from merits review.

We believe such provisions erode democratic accountability and weaken crucial checks and balances on Ministerial power. If passed, the Minister will gain powers over the criteria governing citizenship acquisition, the time it takes for a person to gain citizenship after their application has been approved, and the circumstances in which citizenship can be revoked. While access to Australian citizenship has always involved some element of executive discretion, the Society believes the expanded powers that the Bill confers to the Minister are unacceptable, erode fair process, and undermine the rule of law.

Of particular concern are the provisions that enable the Minister to overrule decisions of the AAT. Specifically, the Minister will be able to override the AAT where it has reviewed a departmental decision to refuse citizenship on the grounds of ‘character’ or identity. Applicants will also lose the right to appeal to the AAT where the Minister states that a decision to refuse citizenship is in the ‘public interest’.

We note that the Explanatory Memorandum accompanying the Bill stresses that Ministerial decisions overriding the AAT will still be reviewable by the courts. However, judicial review in this instance will be of limited significance as the judiciary typically treats the ‘public interest’ as a matter for ministerial determination.⁴ Similarly, vague references to the ‘public interest’ diminish the prospect of meaningful judicial review of Ministerial decisions to revoke citizenship. The Bill fails to establish any clear criteria to justify such revocations.

The Society strongly urges the Committee to reject the unchecked and unprecedented powers that this Bill would place in the hands of the Minister. We believe that no Minister or government authority should be exempt from independent oversight, and passing this Bill would be inconsistent with the rule of law and democratic principles.

REFERENCES

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